

1 JUDGE SIPPEL: Yes, you did, but as I understand  
2 the documents that you previously produced, which is what  
3 you are referring to, have to do with steps that were taken  
4 after the application -- primarily steps that were taken  
5 after the application was filed.

6 Is that not -- is my understanding correct?

7 MR. COLE: That's correct. That's correct.

8 JUDGE SIPPEL: All right. Well, Mr. Southard is  
9 looking for the documents that -- primarily that he's  
10 looking for, he's looking for all the documents, but he's  
11 primarily interested in that area that preceded the filing  
12 of the application.

13 MR. COLE: And am I correct in understanding that  
14 the documents that he is looking for are documents which  
15 supported, that we had in hand, that Adams had in hand prior  
16 to say through July 1, 1994, the filing of the application?  
17 I'm sorry, the application was filed June 30, 1994. So  
18 you're looking for documents in hand prior to June 30, 1994,  
19 with respect to whether or not WTVE's programming was  
20 addressing the public interest and needs of the Reading  
21 Community? Is that what I'm to understand?

22 MR. SOUTHARD: Yes.

23 MR. COLE: I believe -- I believe we have  
24 disclosed all those documents.

25 JUDGE SIPPEL: Do you have any reason to believe,

1 Mr. Hutton, that you're not getting it, that you're not  
2 getting the documents or that you haven't gotten them?

3 MR. SOUTHARD: Their answer doesn't say that. I  
4 mean, their answer -- I mean, if what they are saying by  
5 their answer is, gee, all we have are documents that we  
6 received in discovery in this case and that's what we are  
7 relying on, in other words, we don't have anything prior to  
8 the application, that's fine. I want to make sure I  
9 understand that to be their answer.

10 If there are no documents that they had prior to  
11 filing the application relevant to the public interest of  
12 the Reading community, I want to understand that, and I  
13 think they should say there are -- no such documents exist.

14 JUDGE SIPPEL: Well, that would be a more specific  
15 answer. Would that be your answer?

16 MR. COLE: That would be a nice answer for him but  
17 that's not an answer to the question he asked. I answered  
18 the question he asked, Your Honor. I am not a mind reader.

19 JUDGE SIPPEL: Well, let me ask it to you here  
20 directly today though. Is it true that you have given them  
21 all the documents that you have that is responsive to that  
22 question?

23 MR. COLE: I believe so, Your Honor, yes.

24 JUDGE SIPPEL: Would it be helpful for us if you  
25 checked, if you double checked to be sure that that's true?

1 MR. COLE: I will do so this afternoon.

2 JUDGE SIPPEL: All right. Okay, Mr. Southard?

3 MR. SHOOK: Your Honor, if I may jump in on this.

4 JUDGE SIPPEL: Okay, go right ahead, Mr. Shook.

5 MR. SHOOK: Basically, what I believe we are  
6 trying to discover here and what I think the document  
7 request clearly states is what documents did Adams have in  
8 hand prior to June 30. And at this point in time we do not  
9 have an answer to that. It may be that those documents were  
10 turned over. But in answering this request, there is no way  
11 to determine what it was that Adams had in hand prior to  
12 June 30 that formed its decision about what WTVE's public  
13 interest programming was.

14 JUDGE SIPPEL: Well, that's a very savvy  
15 characterization of what this -- where everything stands.

16 MR. COLE: Your Honor, that's not what the  
17 question says. If they want to ask me that question in an  
18 interrogatory, I'll answer it, but they haven't asked that  
19 question. And while Mr. Shook would like to characterize  
20 that way, that's not what the question says. And you may  
21 want to read it that way, and everybody else may want to  
22 read it that way, but that's not what the language says.

23 JUDGE SIPPEL: Well, I'm trying to avoid getting  
24 into that aspect of what we are here for today. I'm trying  
25 to get -- I'm trying to get beyond that.

1 MR. COLE: I appreciate --

2 JUDGE SIPPEL: And saying I don't want to start  
3 spending a lot of time criticizing somebody's question or  
4 answer. I am trying to figure out this information as Mr.  
5 Shook has articulated it is very, very relevant to this  
6 issue, and I think he's -- no matter what has transpired  
7 before today I would like to see that information provided.  
8 So if you could simply just amend the answer to the request,  
9 I would -- I would appreciate that very much so we get it  
10 done.

11 MR. COLE: Your Honor, I appreciate your concern.  
12 I will do everything I can. I certainly do not want to slow  
13 the process down. But I want to make it very clear that in  
14 the discovery process they asked questions, I answer  
15 questions. I have tried to answer the question.

16 Now, they are coming in complaining that I haven't  
17 answered the question because I didn't answer the question  
18 they asked. I have answered the question they did ask.

19 Now, if they want to change things now and modify  
20 the question, we all understand that is what's going on and  
21 we all acknowledge that, then that's one thing. But I want  
22 to make very, very clear on the record that I have answered  
23 the questions they asked.

24 Now, if you are asking me to revise the question  
25 and answer the revised question, I will do everything I can

1 in my power this afternoon to get a revised answer.

2 JUDGE SIPPEL: That is exactly what I meant. I am  
3 not -- I am not criticizing or suggestions you or your  
4 answer or any -- suggesting any bad faith on that. You  
5 pointed out -- you reminded me that I was observant of this  
6 fact way back when we got into this, that I --  
7 interrogatories are a very difficult way of extracting  
8 information. Okay.

9 MR. COLE: Thank you.

10 JUDGE SIPPEL: So I don't think I have to say  
11 anymore. Mr. Shook articulated what the information was in  
12 its most specific way. I don't want to try and double speak  
13 that one. So let's just leave it the way it is. You are to  
14 respond to Mr. Shook's question and we don't have to say  
15 anything more about document request number six.

16 Okay, now we are down to Interrogatory No. 1, and  
17 again, this is -- the criticism here or the argument here is  
18 that Adams did not respond fully or completely to the  
19 question.

20 Research potential markets, home programming,  
21 research sources, wouldn't that be covered, Mr. Southard,  
22 but what we just got finished with?

23 MR. SOUTHARD: This is very similar to the  
24 discussion we had before with respect to Interrogatories 22  
25 and 23. Yes, much of this information could be gleaned from

1 the documents. I guess I would simply ask that, to the  
2 extent that information isn't available through the  
3 documents, that it be provided in response to the answers to  
4 the interrogatory. And to the extent that Adams is relying  
5 on documents to form their answers to the interrogatory,  
6 that they say that, "These are the documents that we are  
7 relying on."

8 JUDGE SIPPEL: I see. Did you understand that  
9 limitation?

10 MR. COLE: Your Honor, again, this one, I was  
11 trying my darndest to answer the questions. And to the  
12 extent that I didn't understand the questions, but I thought  
13 I could figure out where they were going, I specifically so  
14 stated in my response to the document request, as we  
15 indicated before, and in response to this one.

16 And I think we responded to it. Mr. Gilbert  
17 requested my law firm to provide him with a list of  
18 television stations, broadcasting Home Shopping Program, and  
19 we provided them with that information, and I believe we  
20 provided documents in support of that or in connection with  
21 that in our original production.

22 MR. SOUTHARD: And Your Honor, the scope of the  
23 interrogatory is research with respect to those markets. So  
24 the first step, obviously, would be identify them; second,  
25 well, was it research, then let's go investigate them, and

1       that's what we are looking for.

2               Now, if what they are saying, again, if what they  
3       are saying is, gee, we didn't do anything else but identify  
4       the markets, we never bothered to research them, we're happy  
5       with that answer.

6               JUDGE SIPPEL: Well, you can ask that question of  
7       Mr. Gilbert and other principals either at their  
8       depositions -- I mean, I'm not trying to jump ahead to Mr.  
9       Cole's motion, but you're going to have ample opportunity to  
10      ask that question, if not at deposition, certainly at the  
11      hearing. And if they have not given -- if a principal of  
12      Adams testified that, yes, we looked very carefully into  
13      markets X, Y and Z, and it turns out that none are in those  
14      documents that they were going to produce to you, then  
15      they've got a serious problem. So I don't think it's in  
16      their interest to hold back on this.

17              Mr. Shook, did you want to --

18              MR. SHOOK: I have nothing to add on this.

19              JUDGE SIPPEL: Yes, so I'm going to presume that  
20      this is going to be -- that Interrogatory No. 1 has now been  
21      mooted by what transpired previously today, and so I'm going  
22      to deny the motion to compel on Interrogatory No. 1.

23              Okay, Interrogatory No. 2 -- well, this again is  
24      research of potential markets. Isn't this basically what  
25      this is all about?

1           MR. SOUTHARD: This is -- number two asks for  
2 detail with respect to the undertakings identified in number  
3 one.

4           JUDGE SIPPEL: Okay. Well, Mr. Cole, am I right  
5 to assume that as far as you are concerned this question, in  
6 light of what we have done this morning, has been asked and  
7 answered?

8           MR. COLE: That would be my position, Your Honor.

9           JUDGE SIPPEL: All right.

10          MR. COLE: And also, not only asked and answered  
11 this morning, but also in our responses because we provided  
12 some information, we brought in some documents. You know,  
13 I'm not sure what else -- what else they would be looking  
14 for.

15          JUDGE SIPPEL: Okay. Mr. Shook?

16          MR. SHOOK: I have nothing to add.

17          JUDGE SIPPEL: Well, I am going to consider that  
18 to be mooted out also, so I'm going to deny motion to compel  
19 on Interrogatory No. 2. And you know -- well, I've  
20 already -- again, I caution in that area that there will be,  
21 there are -- this is an area -- this is subject to the  
22 adverse inferences being drawn, and I'm looking upon that as  
23 what we've -- this area of researching to be in the best  
24 interest of Adams to come forward.

25          Interrogatory No. 11, review of video tapes. I



1 thought that Mr. Gilbert or that Adams has said that he just  
2 used video, regular standard video tape recording machinery.  
3 That's what he's answered to in his response to the  
4 interrogatory and that's what he -- essentially that's what  
5 he testified to here in open court.

6 What more would you be looking for?

7 MR. SOUTHARD: I'd like to know -- honestly? I  
8 would love to know what the manufacturer and the model was,  
9 but I don't know what's a standard video recording unit is.  
10 Is he talking about a two-head unit? Is this a four-head  
11 unit?

12 JUDGE SIPPEL: Oh, you just walked past me on  
13 that.

14 (Laughter.)

15 JUDGE SIPPEL: But I think I can safely --

16 MR. SOUTHARD: -- to me is the standard.

17 MR. COLE: Your Honor, I think I can safely say he  
18 walked past Mr. Gilbert too.

19 JUDGE SIPPEL: Well, let's do the best we can to  
20 give them exactly what Mr. Southard has asked for, the name  
21 of the model, the model number and if you -- well, you  
22 should be able to come up with that information. You must  
23 know what machines you put the tapes in to look at.

24 MR. COLE: Mr. Gilbert advises me, and I will go  
25 back and ask him again, but he advised me in connection with

1     this that he had no recollection of what type of machine it  
2     was or where it currently resides at this point because it  
3     was six years ago.

4             MR. SHOOK: I think, Your Honor, let me jump in on  
5     this for a second. I mean, I can relate my own personal  
6     experience here. I mean, we have switch video recording  
7     machines at home in the past six years, and unless I happen  
8     to keep the bill that reflected, you know, what the earlier  
9     machine was, there is no way in the world I would know. But  
10    at the same time It's simply a matter of is this information  
11    available to Mr. Gilbert or others in Adams, and if so,  
12    provide it. And if it's not, so state. That's all.

13            MR. SOUTHARD: For the record, I still have my VCR  
14    from '94 and use it regularly.

15            MR. SHOOK: Mine broke. I have a lot of users at  
16    home.

17            JUDGE SIPPEL: That's right, Mr. Shook is in a  
18    different category to all these questions.

19            You know, again I would just ask, I would require  
20    that Adams do just that. I mean, make a bona fide attempt  
21    to ascertain what it was -- Mr. Southard has asked the  
22    question -- who the manufacturer was, what the model number  
23    was, and anything else to the extent -- anything else of a  
24    technical nature to the extent that's available.

25            MR. COLE: I will do so again, Your Honor. And in

1     our answers to the motion to compel, I had asked Mr. Gilbert  
2     precisely that question, and Mr. Gilbert advised me he had  
3     no recollection and couldn't find out, but I will confirm  
4     that through him again, and so state again.

5             But again, I'm not 100 percent sure what the  
6     ultimate relevance of the make and model is, but I will try  
7     to find out. If Mr. Southard thinks it's important, then we  
8     will try to find out.

9             JUDGE SIPPEL: Well, alright.

10            MR. SOUTHARD: Well, let me put it to you this  
11     way. If it turns out that the tapes were VHS as tapes and  
12     the only machine he had was a Beta machine, he couldn't have  
13     watched the tapes.

14            JUDGE SIPPEL: Now I can follow that, see.

15            MR. SOUTHARD: I mean, at least I know that much.

16            JUDGE SIPPEL: There you go. Boy, did you get a  
17     showing of relevance there, Mr. Cole.

18            MR. COLE: And I appreciate that, Your Honor.

19            JUDGE SIPPEL: Okay. Now, that takes care of  
20     discovery.

21            MR. COLE: There is one more. I didn't know  
22     whether you wanted to address Interrogatories 4 and 9, but  
23     I've got that on my list.

24            JUDGE SIPPEL: Okay. I take that back, four and  
25     nine.

1 MR. SOUTHARD: We can short circuit that, Your  
2 Honor. They have answered that it was an adult female. And  
3 if that's all he recalls about the person, then we'll accept  
4 that.

5 JUDGE SIPPEL: Well, that's his answer.

6 MR. SOUTHARD: Yeah. If that's his answer, that's  
7 his answer.

8 JUDGE SIPPEL: If he changes his at hearing, you  
9 know, it's not your problem. It's somebody else's problem.

10 Okay, time frame for doing this all, can we get it  
11 all done by next Monday?

12 MR. COLE: We should be able to have all this done  
13 by tomorrow --

14 MR. COLE: All right.

15 MR. COLE: As far as I'm -- Your Honor, certainly  
16 as far as documents that are in my possession, I will try to  
17 get those to Mr. Southard and Mr. Hutton as early as  
18 tomorrow. To the extent I need to confer with Mr. Gilbert  
19 about fleshing out, as I recall -- let me just look at my  
20 notes. I think the Interrogatories 22 and 23 and I think it  
21 was document request number one, let me just make sure I  
22 have those.

23 Yes, 22 and 23 will require narrative responses or  
24 fairly detailed responses, but I will try to get those by  
25 the end of the week. And document request two, that relates

1 to the Marlborough materials, as I understand it, that  
2 shouldn't be too hard to get out.

3 JUDGE SIPPEL: Well, let put it this -- I very  
4 much appreciate the way you are reacting to that request.  
5 Let me get a status report on this at the end of the week.

6 MR. COLE: Okay. And I will try to act as quickly  
7 as possible to put documents in their hands, and then let  
8 you know where things stand by Friday and we can go from  
9 there.

10 JUDGE SIPPEL: That's fine. Okay, now I'm going  
11 to just issue a very, rather broad order. I'm afraid I  
12 don't want to rely on my notes and my mental recollections  
13 on each of these specific things, but you all know, and  
14 certainly the transcript will be definitive, but that's  
15 where I come out on a ruling on this.

16 Now, my big concern, as I've indicated throughout,  
17 is keeping the June 12th and 13th hearing dates, which would  
18 start off with rebuttal and then Phase II. I mean, we  
19 really wouldn't even be getting to Phase III on that date.  
20 But in the meantime, there are depositions to be taken. I  
21 signed subpoenas for five; one, two, three, four, five. We  
22 certainly have to have the -- we certainly have to have some  
23 information with respect to the Telemundo efforts --

24 MR. COLE: Your Honor.

25 JUDGE SIPPEL: -- if you want to categorize them

1     that way.

2                 MR. COLE:  Are you saying --

3                 JUDGE SIPPEL:  And we to think --

4                 MR. COLE:  I'm sorry.  I apologize.  But I want to  
5     understand what you are saying.

6                 Are you saying that you have ruled that the  
7     depositions will go forward?

8                 JUDGE SIPPEL:  Well, no, I haven't ruled because  
9     nobody has had a chance to oppose them yet.

10                MR. COLE:  Exactly.

11                JUDGE SIPPEL:  What I'm trying to do is I'm trying  
12     to anticipate what needs are.  You know, I'm trying -- what  
13     the needs are in terms of this issue.

14                MR. COLE:  But, Your Honor, the needs, as I  
15     understand it, are identified by the party with the burden  
16     of proceeding.

17                JUDGE SIPPEL:  True.

18                MR. COLE:  And it is their job to undertake  
19     discovery in a timely manner with respect to that which they  
20     perceive to be appropriate fact finding; that the time for  
21     doing that passed on Friday.

22                JUDGE SIPPEL:  All right.  Well, you know, I'll  
23     bring you up to date on that.  I was trying to be as candid  
24     as I thought was necessary and as I could be when I issued  
25     that order describing what I was authorizing, and I realize

1 the fact that when I authorized these three principals, and  
2 they came to me with an in camera -- not an in camera  
3 request -- an ex parte request for discovery subpoenas,  
4 which Adams -- which you and Mr. Bechtell had done earlier.

5 MR. COLE: Yes.

6 JUDGE SIPPEL: And I was following that same  
7 procedure, fully aware of the fact that there was a May 5  
8 date out here. But the May 5 date wasn't going to be -- it  
9 wasn't going to help if I just sat there and then tried to  
10 hear argument with respect to what to do with the May 5 date  
11 while these petitions were sitting, or these requests were  
12 sitting on my desk. So I authorized the issuance of these  
13 subpoenas subject, of course, to going through the regular,  
14 the normal procedures with respect to noticing depositions,  
15 although I did feel that it would make sense to serve the  
16 subpoenas with the notices of depositions, so that we didn't  
17 have to stagger this thing.

18 But anybody that insists on 21 days is entitled to  
19 get the 21 days. Anybody that's got a basis for objecting  
20 to any discovery, any attorney, particularly non-parties, on  
21 the basis of it being abusive or not respecting their time  
22 restraints, et cetera, et cetera, et cetera, certainly those  
23 are going to be considered very carefully and probably  
24 honored.

25 But if it's a question of whether or not this is

1 relevant information to the added issue, that's a whole  
2 different kettle of fish.

3 MR. COLE: Your Honor, the question is not  
4 relevance. The question is whether or not discovery was  
5 initiated in a timely manner within the time frame that you  
6 established back in March.

7 JUDGE SIPPEL: Right.

8 MR. COLE: And that has not been done.

9 JUDGE SIPPEL: Right.

10 MR. COLE: And that being the case, you know,  
11 Adams is opposed to taking the three Adams' principals'  
12 depositions on that basis, and others, and we will certainly  
13 pose the taking of the additional depositions.

14 JUDGE SIPPEL: The which depositions?

15 MR. COLE: The additional depositions, and  
16 additional depositions because none others, to my knowledge,  
17 have been noticed.

18 MR. HUTTON: Your Honor, we did file notice of  
19 depositions to the other five on Friday.

20 JUDGE SIPPEL: The other five. And the three had  
21 been filed -- the three principals of Adams, rather, had  
22 been filed before the May 5 deadline?

23 MR. HUTTON: Yes, I think they were filed around  
24 May 1st.

25 MR. COLE: They were filed on May 1, and I did not



1 receive any on Friday, any notices on Friday.

2 JUDGE SIPPEL: All right. Well, what the issue  
3 is, obviously the issue is -- it's an obvious issue -- that  
4 whether or not I should exercise discretion and extend  
5 beyond May 5 the closing of the discovery in this case. And  
6 I understand what your position is, I think, very clearly,  
7 Mr. Cole.

8 What is the Bureau's position on this?

9 MR. SHOOK: Basically, I would think that the  
10 ultimate decision should be based on what is it that Reading  
11 had available to it well before May 5 that would have  
12 allowed persons that needed to be deposed to be identified  
13 and served with a notice. That certainly poses a problem  
14 for them with respect to the Adams' principals because those  
15 individuals, of course, were well known prior to that time.

16 With respect to the other five individuals, I  
17 really can't say at this point because I don't know who  
18 those other five individuals are.

19 But again, thinking of it in terms of were these  
20 people readily identifiable well before the May 5 date, or  
21 is it something where, although they could have been  
22 identified at any point, deposing them would have been lost  
23 without having in their possession the documents which they  
24 could not have obtained or perhaps which they have not yet  
25 obtained.

1 JUDGE SIPPEL: Well, I did issue an order,  
2 identified who the -- who the other five were, didn't I? I  
3 believe I did.

4 MR. SHOOK: That could well be, Your Honor.

5 MR. COLE: Yes.

6 MR. SHOOK: But like Mr. Cole, I didn't see the  
7 notices themselves.

8 JUDGE SIPPEL: No.

9 MR. SHOOK: I can assume for the purpose of this  
10 discussion that those notices are the persons that you  
11 identified in your order, but I couldn't now that with  
12 certainty.

13 JUDGE SIPPEL: Okay. Well, who wants to address  
14 this? Mr. Hutton or Mr. Southard?

15 MR. HUTTON: I'd like to.

16 Basically, I think you have to remember the  
17 context in which we are operating. We had not planned to  
18 proceed with Phase III in conjunction with Phase II until  
19 the prior, the last prehearing conference. And at that  
20 point we collectively decided that it would make sense to  
21 try to conduct discovery and a hearing on both issues  
22 concurrently.

23 You ordered us to cooperate with the Bureau to  
24 file discovery motions by April 3rd. We did so. One of  
25 those motions was a request for production of documents, and

1 I had anticipated that we would get the documents, be able  
2 to decide who we would depose and in what order we would  
3 depose them once we had all the documents in hand.

4 And I understood there was a May 5th deadline, but  
5 you also indicated that you were going to be flexible and  
6 that we -- when we set the schedule at the last prehearing  
7 conference, that you were going to have to allow for some  
8 flexibility given the fact there was a very tight time  
9 frame.

10 Now we have set forth the procedure that will  
11 allow the depositions to take place by the end of this month  
12 and keep the hearing schedule in place. I don't see that  
13 there is any detriment to the public interest in extending  
14 the May 5th deadline to allow for these depositions.

15 JUDGE SIPPEL: Well, it's not so much the public  
16 interest. It's the rights of the other parties that I'm  
17 concerned about here.

18 MR. HUTTON: Well, I don't see any detriment to  
19 the rights of the other parties.

20 JUDGE SIPPEL: Well, they are banking on this May  
21 5 cutoff date, and there was no motion filed seeking leave  
22 to extend it beyond May 5. The discovery request simply  
23 came in.

24 MR. HUTTON: Well, we did file a motion.

25 JUDGE SIPPEL: A motion to stay, yes, the motion

1 to --

2 MR. HUTTON: We did file a motion to stay, and --

3 JUDGE SIPPEL: That came in late though. That was  
4 what, May 1st, May 2nd?

5 MR. SOUTHARD: May 1st.

6 MR. HUTTON: Well, again, I had some intervening  
7 personal issues that I was focused on.

8 MR. COLE: Your Honor, if I may.

9 JUDGE SIPPEL: Well, I understand that, but I  
10 mean, you know, filing -- I mean, when you see that you're  
11 going to have a time problem running up against the May 5  
12 deadline, it doesn't take a lot to file a motion outlining  
13 what your concerns are, giving us all a chance to address  
14 it. I mean, this is not very pleasant.

15 MR. HUTTON: Well, I think we're all -- when we  
16 took those deadlines we hadn't anticipated that we would be  
17 getting a four corners offense from Adams, which I think  
18 we're certainly getting.

19 JUDGE SIPPEL: A what? A four corners?

20 MR. HUTTON: A delay strategy. I'm sorry.

21 JUDGE SIPPEL: I understand perfectly what you're  
22 getting at.

23 MR. HUTTON: They have not produced the documents  
24 that we asked for. The discovery deadline has come and we  
25 still don't have all the documents.